

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0437

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

MELVIN MATSON,

Defendant and Appellant.

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**BRIEF OF APPELLEE**

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On Appeal from the Montana Fifth Judicial District Court,  
Jefferson County, The Honorable Loren Tucker, Presiding

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## **STATEMENT OF THE ISSUE**

Did a police detective have particularized suspicion justifying an investigatory stop of Matson when he observed Matson in a material storage yard that was closed for the evening, he knew that thefts from similar locations had recently occurred, he knew that Matson was not an employee of the business or another person authorized to be there, and he observed that Matson had difficulty operating the clutch on his truck?

## **STATEMENT OF THE CASE**

Melvin Arthur Matson (Matson) was charged in Justice Court with operating a vehicle while under the influence of alcohol and operating a vehicle with a blood alcohol content above .08. (D.C. Doc. 1, Citation filed 9/2/08.<sup>1</sup>) He filed a Motion to Suppress for Lack of Particularized Suspicion. (Motion to Suppress filed 10/29/08.) Following a hearing on the motion, the justice court granted Matson's Motion to Suppress and ordered that the case be dismissed. (D.C. Doc. 1, Order Granting Def.'s Mot. to Suppress for Lack of Particularized Suspicion and Order to Dismiss filed 12/16/08.)

The State appealed the dismissal to the district court. (Notice of Appeal filed 12/10/08.) The district court held a hearing on April 15, 2009. (4/15/09 Tr.)

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<sup>1</sup> The justice court documents are filed in D.C. Doc. 1 in chronological order.

At the end of the hearing, the district court denied Matson's Motion to Suppress. (4/15/09 Tr. at 54-63.) Matson subsequently pled guilty to operating a motor vehicle with a blood alcohol content above .08, in violation of Mont. Code Ann. § 61-8-406, reserving the right to appeal the denial of his Motion to Suppress. (5/27/09 Tr. at 8-10; Appellant's Ex. A.)

### **STATEMENT OF THE FACTS**

At approximately 7:25 p.m. on a Friday night in August 2008, Jefferson County Sheriff's Department Detective Bob Gleich (Detective Gleich) was driving down a street in Clancy and noticed a cloud of dust coming out of a storage yard operated by Gruber Excavating. (4/15/09 Tr. at 8-9.) The cloud of dust caught Detective Gleich's attention because he was aware that nobody should be in the yard at that time of the day. (4/15/09 Tr. at 10.) Detective Gleich knew the owner of the business personally and knew all of the employees of the business. (4/15/09 Tr. at 10.) He also knew that the employees leave the yard at 5:00 p.m. (4/15/09 Tr. at 11.) Detective Gleich knew these details about the business because he had lived in Jefferson County for years, had worked for the Jefferson County Sheriff's Department for nearly ten years, and had a business on the side building homes. (4/15/09 Tr. at 8, 10.) In fact, Detective Gleich had been at the yard earlier that

day to get materials before his shift with the Sheriff's Department began. (4/15/09 Tr. at 11-12.)

When Detective Gleich approached the intersection next to the yard, he saw a blue pickup truck driven by Matson exiting the yard. (4/15/09 Tr. at 12-13.)

Detective Gleich saw Matson and did not recognize him as anybody who should have been in the yard. (4/15/09 Tr. at 13.) Detective Gleich also observed that the license plate on the truck began with a 6, indicating that the vehicle was registered in Gallatin County. Detective Gleich knew that the employees of Gruber Excavating drove vehicles that were registered in Lewis and Clark County or Jefferson County. (4/15/09 Tr. at 19.)

Detective Gleich was aware that other properties in the area similar to the yard Matson was exiting had experienced thefts. Scrap metal and diesel fuel prices were high at the time. (4/15/09 Tr. at 14, 34.) Gruber Excavating had experienced two thefts at two other properties in Montana City, and somebody had stolen diesel fuel from a business across the road from the yard where Detective Gleich observed Matson. (4/15/09 Tr. at 13-16, 34.) As a result of these thefts, the owner of Gruber Excavating had asked Detective Gleich to increase the patrolling around his business. (4/15/09 Tr. at 14-15.) All of the thefts in the area that Detective Gleich had investigated involved people and vehicles from outside of Jefferson County. (4/15/09 Tr. at 15.)

Detective Gleich stopped at the intersection and motioned for Matson to go ahead. Matson's vehicle jerked as he took off, as if he were having difficulties driving a vehicle with a clutch. (4/15/09 Tr. at 15.) As Matson exited the yard, Detective Gleich pulled in behind him. (4/15/09 Tr. at 16.) Matson stopped at another intersection, and his vehicle jerked again as he took off. (4/15/09 Tr. at 16.) Detective Gleich checked the registration of Matson's truck with dispatch and was informed that there were not any reports of the truck being stolen. (4/15/09 Tr. at 16, 26.)

After following Matson a short time, Detective Gleich activated his emergency lights and conducted a traffic stop in order to determine why Matson was leaving the Gruber Excavating yard and why he appeared to be nervous. (4/15/09 Tr. at 17.) During the stop, Detective Gleich determined that Matson was intoxicated and arrested Matson for operating a vehicle while under the influence of alcohol and operating a vehicle with a blood alcohol content above .08. (D.C. Doc. 1, Citation filed 9/2/08.)

The district court held a hearing on Matson's Motion to Suppress on April 15, 2009. At the hearing, Detective Gleich explained that he was concerned that Matson may have taken parts from the vehicles or equipment parked in the yard or stolen diesel fuel because those were the types of thefts that had been occurring. (4/15/09 Tr. at 20.) Detective Gleich testified that he could not see into the bed of

the truck and could not determine whether it contained anything that had been taken from the yard. (4/15/09 Tr. at 24.)

Detective Gleich and the owner of the yard, William Gruber (Gruber), described the yard as a material storage yard that contains materials such as gravel and top soil, along with heavy equipment. (4/15/09 Tr. at 32.) Gruber explained that his employees deliver materials from that yard, and it is not a location where customers come to purchase materials, although people do sometimes come into the yard to inquire about materials. (4/15/09 Tr. at 41-44.) The entrance to the yard is usually closed in the evening with a wire gate, but the gate is sometimes left open. (4/15/09 Tr. at 22, 42.) Outside of the entrance is a sign stating, “Saturday deliveries, Gruber Excavating, Inc., Top soil, granite, sand, manure,” and another sign advertising for Chubby’s Bar and Grill. (4/15/09 Tr. at 23; Defendant’s Ex. A.)

Detective Gleich testified that he knew nobody should be in the yard on a Friday evening. (4/15/09 Tr. at 12.) He acknowledged that it would be possible for an excavation company to be doing work in the evening, but he explained that, other than he and his brother, people who would be there in the evening would be in a vehicle with the name of a local construction company written on the door. (4/15/09 Tr. at 31.)



Detective Gleich explained that Matson's difficulty in operating his truck added to Detective Gleich's suspicion that Matson was involved in criminal activity. (4/15/09 Tr. at 16.) Detective Gleich suspected that either the truck did not belong to Matson or Matson was driving poorly because he was nervous to have a police officer behind him. (4/15/09 Tr. at 16.) Although Detective Gleich knew that Matson's truck had not been reported stolen, he also knew that vehicles are often not reported stolen for days. (4/15/09 Tr. at 29-30.) Other than jerking his vehicle, there were not any other problems with Matson's driving. (4/15/09 Tr. at 17.)

Detective Gleich explained that the totality of the circumstances led him to suspect that Matson was involved in criminal activity. Those circumstances were the type of thefts that had been occurring, the fact that Matson was not an employee, and the fact that Matson was exiting the yard on a Friday evening. (4/15/09 Tr. at 34-35.) According to Detective Gleich, Matson, "matched everything that led me to believe that he may have been involved in some of this theft that we were having." (4/15/09 Tr. at 35.)

### **SUMMARY OF THE ARGUMENT**

Detective Gleich's knowledge about the operation of the Gruber Excavating yard and his knowledge of crimes that had been committed in the area allowed him

to establish a particularized suspicion that Matson was involved in criminal activity. Detective Gleich knew that the Gruber Excavating yard was closed for the evening, that it contained the same type of materials that had recently been stolen from similar locations, that Matson was not a person who was authorized to be there, and that the other thefts in the area had been conducted by people from out of the county. Detective Gleich observed that Matson was from another county and that he had difficulty operating the clutch on his vehicle. These facts provided Detective Gleich with particularized suspicion to stop Matson.

## **ARGUMENT**

### **I. STANDARD OF REVIEW**

This Court reviews the denial of a motion to suppress evidence to determine whether the district court's findings of fact are clearly erroneous and whether the court correctly applied those findings as a matter of law. State v. Wilkins, 2009 MT 99, ¶ 4, 350 Mont. 96, 205 P.3d 795. A finding of fact is clearly erroneous if it is not supported by substantial evidence, the court has clearly misapprehended the effect of the evidence, or this Court is left with a definite and firm conviction that the district court made a mistake. State v. Jarman, 1998 MT 277, ¶ 8, 291 Mont. 391, 967 P.2d 1099.

**II. DETECTIVE GLEICH’S KNOWLEDGE OF THE GRUBER EXCAVATING YARD AND CRIMES THAT HAD BEEN COMMITTED AT SIMILAR LOCATIONS, COMBINED WITH HIS OBSERVATION OF MATSON IN THE YARD WHEN IT WAS CLOSED AND THE JERKING OF MATSON’S VEHICLE, ALLOWED DETECTIVE GLEICH TO ESTABLISH PARTICULARIZED SUSPICION TO STOP MATSON.**

The Fourth Amendment to the United States Constitution and article II, section 11 of the Montana Constitution protect persons from unreasonable searches and seizures. These protections apply to investigative stops of vehicles.

State v. Gopher, 193 Mont. 189, 194, 631 P.2d 293, 296 (1981). Montana Code Ann. § 46-5-401(1) provides that,

in order to obtain or verify an account of the person’s presence or conduct or to determine whether to arrest a person, a peace officer may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit an offense.

To have a particularized suspicion to justify a stop, an officer must have:

“(1) objective data and articulable facts from which he or she can make certain reasonable inferences; and (2) a resulting suspicion that the person to be stopped has committed, is committing, or is about to commit an offense.” State v. Brown, 2009 MT 64, ¶ 20, 349 Mont. 408, 203 P.3d 842.

Whether particularized suspicion supports an investigative stop is a question of fact that this Court evaluates in the context of the totality of the circumstances.

State v. McMaster, 2008 MT 294, ¶ 13, 345 Mont. 408, 191 P.3d 443. When

evaluating the totality of the circumstances, this Court considers the quantity or content of the information available to the officer and the quality or degree of reliability of that information. Id.

To establish particularized suspicion, police officers can rely on their knowledge of the patterns of law breakers. In Gopher, an officer responded to a store after a silent burglar alarm went off. 193 Mont. at 190, 631 P.2d at 294. The officer discovered that a window to the store had been broken, there were empty spaces in the rifle rack, and there was one set of tire tracks leaving the store. Id. The officer soon noticed a vehicle driving slowly past the store and noticed that the occupants exhibited unusual curiosity in the store. Id. The officer knew that it was common for burglars to return to a crime scene after breaking a window. Id. Based on this information, the officer requested that another officer stop the vehicle. Id. This Court held that the facts of the case, combined with the officer's extensive experience, enabled the officer to suspect that the occupants of the vehicle were involved in the burglary and justified the investigatory stop. Gopher, 193 Mont. at 194, 631 P.2d at 296.

Similarly, in State v. Flemings, 2008 MT 229, 344 Mont. 360, 188 P.3d 1020, this Court held that an officer had particularized suspicion to stop the defendant because a burglary had recently occurred on the remote mountain road the defendant was coming down, officers expected the burglar to return, and there

were no other people in the area. Flemings, ¶¶ 22-30. This Court noted that “objective data supporting certain inferences may be based on various objective observations, information from available police reports, as well as consideration of the modes or patterns of operation of certain kinds of lawbreakers.” Flemings, ¶ 28 (citation omitted).

A police officer’s knowledge that a particular crime is prevalent at a location can also contribute to the establishment of particularized suspicion. In McMaster, this Court upheld the stop of a known drug dealer based upon his suspicious behavior at a gas station where drug deals were known to occur. McMaster, ¶ 23. An officer was at the gas station when he noticed three individuals acting suspiciously. McMaster, ¶ 4. The three individuals exited their vehicles and entered a casino connected to the gas station, looking over their shoulders as they went inside. Id. A short time later, they exited the casino and exchanged a box. McMaster, ¶ 5. They each drove away from the casino. Id. The officer followed one of the vehicles, and requested that another officer follow another vehicle. Id. The other officer soon discovered that the vehicle he was following was registered to McMaster, and the officer knew that McMaster was a known cocaine and methamphetamine dealer. McMaster, ¶¶ 5-6. The officer noticed that McMaster repeatedly looked at him, and he observed McMaster driving erratically.

McMaster, ¶ 19, ¶ 22. Based on this information, the officer requested that an officer in a marked patrol vehicle stop McMaster. McMaster, ¶ 6.

McMaster challenged the traffic stop, arguing that the officer did not have particularized suspicion to stop him because all of the behavior observed by the officer was legal. McMaster, ¶ 14. This Court rejected McMaster’s “divide-and-conquer” approach, and noted that “a series of innocent actions, when taken together, may warrant further investigation.” McMaster, ¶¶ 15-16. This Court concluded that the totality of the circumstances were sufficient to enable the officer to infer that McMaster was engaged in criminal activity. McMaster, ¶ 23.

Similarly, an officer can establish particularized suspicion to stop a vehicle where the occupants are behaving suspiciously and are present in a high crime location at night. In State v. Hilgendorf, 2009 MT 158, ¶ 5, 350 Mont. 412, 208 P.3d 401, an officer noticed a vehicle with its engine running parked next to closed businesses late at night. The officer was aware that the businesses in that area had been experiencing a high rate of theft and burglary. Id. The officer drove past the running car and circled the block. Id. When the officer came back around the block, the parked vehicle immediately pulled out and drove away quickly. Id. The officer followed the vehicle and noticed that the occupants were moving around inside as if they were trying to conceal something. Id. Based on that activity, the officer initiated a traffic stop. Id. This Court concluded that the

officer's observation of the vehicle parked next to closed businesses at night, in addition to the suspicious way in which the occupants of the vehicle behaved after the vehicle pulled out, constituted objective data from which the officer could believe the occupants of the vehicle were involved in criminal activity.

Hilgendorf, ¶ 18.

Similar to the officers in Gopher, Flemings, McMaster, and Hilgendorf, Detective Gleich had knowledge of types of crimes that had been occurring in the area and the behavior of the perpetrators of those crimes. That knowledge enabled him to form a particularized suspicion that Matson had committed a theft at the Gruber Excavating yard.

As Detective Gleich explained, he knew that nobody should be at the yard at 7:25 p.m. on a Friday evening, and he knew that Matson was not an employee or any other person who would have a reason to be in the yard. Detective Gleich knew that Gruber Excavating did not sell directly to customers at the yard, and it was apparent that the yard was closed. Detective Gleich also knew that thefts of scrap metal and fuel had occurred from other Gruber Excavating sites in the area and from a similar business in Clancy. Detective Gleich had specifically been asked to increase his patrols of the yard. In addition, Matson's vehicle was registered in Gallatin County, indicating that the driver was not from the Clancy

area. The thefts Detective Gleich had investigated involved people coming from outside of Jefferson County.

Based on that information, Detective Gleich had reason to suspect that Matson was involved with criminal activity in the yard. This Court has stated that a “trained and experienced law enforcement officer is entitled to draw inferences and make deductions that might well elude a layperson in determining whether a particular stop is justified.” State v. Clawson, 2009 MT 228, ¶ 14, 351 Mont. 354, 212 P.3d 1056 (internal quotation marks and citations omitted). All of the knowledge Detective Gleich had about the yard and the types of crimes being committed in the area, combined with Matson’s difficulty driving his truck, provided Detective Gleich with “objective data and articulable facts” from which he could form a particularized suspicion that Matson was involved in criminal activity.

Although Matson argues that the knowledge Detective Gleich obtained in his personal life is “subjective” and cannot be relied on, knowledge an officer has about his community based on his life in the community constitutes both “objective data” and “articulable facts.” The knowledge Detective Gleich had about the yard is the type of “objective data” that any officer could learn by living in the community. The fact that not every officer would know that information does not prevent it from being “objective” and should not prohibit an officer from



relying on it. Detective Gleich's testimony demonstrates that his knowledge also consisted of "articulable facts." Detective Gleich was able to provide the district court with specific facts about the yard to explain why he suspected Matson of criminal activity, and he explained how he acquired that knowledge.

The "objective data and articulable facts" requirement should be interpreted to prohibit officers from relying on unsupported hunches, not to prohibit officers from applying their personal knowledge. The knowledge that Detective Gleich has of the yard is the same type of knowledge that officers generally have about the communities they patrol. Whether they gain that knowledge in their personal lives or in their official capacity does not matter. To hold otherwise would require officers to segregate the knowledge they have about their community and ignore all of the knowledge they have gained while they were off-duty. Not only would it be impossible for officers to divide their knowledge in this manner, it would also greatly hinder their ability to protect their community. This Court should consider all of the facts Detective Gleich articulated, whether he gained the knowledge in his personal or professional capacity, in order to determine whether he had particularized suspicion.

Matson also cites to State v. Jarman, 1998 MT 277, 291 Mont. 391, 967 P.2d 1099, and observes that presence in a high crime neighborhood is not sufficient justification to support an investigatory stop. However, Detective Gleich did not

stop Matson based on his presence in a high crime neighborhood. Unlike the defendant in Jarman, who was stopped because he had been using a pay phone in a high crime neighborhood and left the phone booth after an officer drove by, Jarman, ¶ 15, Matson was not on a public street. Instead, Matson was at a private business that was closed for the evening. That business had the same materials as other businesses in the area that had recently experienced thefts. Furthermore, Detective Gleich knew Matson was not authorized to be in the yard at that time. Detective Gleich also knew that the recent thefts had been committed by people who were not from Jefferson County, and Matson's truck was registered in another county. These factors distinguish this case from Jarman.

The knowledge Detective Gleich had about the yard enabled him to establish particularized suspicion that Matson was involved with criminal activity. More specifically, Detective Gleich knew what materials were in the yard, that those materials had recently been stolen from similar locations, that the yard was closed on Friday evenings, and that Matson was not authorized to be there. Detective Gleich also observed that Matson was not from Jefferson County and had difficulty operating the clutch in his truck. These facts provided Detective Gleich with particularized suspicion to stop Matson.

## **CONCLUSION**

The district court correctly denied Matson's Motion to Suppress. Therefore, his conviction should be affirmed.

Respectfully submitted this \_\_\_\_ day of March, 2010.

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### **CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and accurate copy of the foregoing Brief of Appellee to be mailed to:

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### **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is not more than 10,000 words, not averaging more than 280 words per page, excluding certificate of service and certificate of compliance.

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MARDELL PLOYHAR